

CAUSE NO. 2018-82890

Fiesta Mart, LLC	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
ACON Investments, LLC	§	
	§	
Defendant.	§	
	§	151 ST JUDICIAL DISTRICT
	§	

**MOTION FOR THOMAS D. CUNNINGHAM TO APPEAR
PRO HAC VICE ON BEHALF OF PLAINTIFF**

By this application, Plaintiff Fiesta Mart, LLC (“Plaintiff,” “Fiesta,” or “Fiesta Mart”), seeks an order admitting Thomas D. Cunningham as counsel *pro hac vice*.

Rule XIX of the Rules Governing Admission to the Texas Bar specifically provides for the admission of out-of-state counsel to appear before this Court upon written application to appear as counsel *pro hac vice*. In pertinent part, Rule XIX provides:

A reputable attorney, licensed in another state or in a foreign jurisdiction but not in Texas, who resides outside of Texas may seek permission to participate in the proceedings of any particular cause in a Texas court by complying with the requirements of Texas Government Code Section 82.0361 concerning payment of a non-resident attorney fee to the Board of Law Examiners as a mandatory initial requirement. Upon completion of this requirement and receipt of an acknowledgment issued by the Board of Law Examiners, the non-resident attorney shall file with the applicable Texas court a written, sworn motion requesting permission to participate in a particular cause.

As set forth in the Verified Application of Thomas D. Cunningham to Appear as Counsel *Pro Hac Vice*, and the Declaration of Penny P. Reid, Thomas D. Cunningham has been retained as counsel for Plaintiff and has fulfilled all of the requirements for *pro hac vice* admission as set

forth in Rule XIX of the Rules Governing Admission to the Texas Bar. Granting Plaintiff's application to admit Thomas D. Cunningham *pro hac vice* is necessary and appropriate in these circumstances because Plaintiff has selected Thomas D. Cunningham as its counsel of choice in this matter.

Thomas D. Cunningham is not a resident of Texas and is not regularly employed or engaged in professional or other activities in Texas. Thomas D. Cunningham is a member in good standing of all State Bar Associations of which he is a member.

As reflected in the accompanying proof of service, notice of Thomas D. Cunningham's application for *pro hac vice* is being provided to all parties. The State Bar fee of \$250 has been paid to the Texas Board of Law Examiners as required by Rule XIX. See Decl. of P. Reid at ¶ 4, Ex. A (proof of payment).

For the reasons stated above, Plaintiff respectfully requests this Court to enter the concurrently filed [Proposed] Order Granting Motion for Thomas D. Cunningham to Appear as Counsel *Pro Hac Vice* on Behalf of Plaintiff.

Dated: November 26, 2018.

Respectfully Submitted,

/s/ Penny P. Reid

Penny P. Reid

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**ATTORNEYS FOR PLAINTIFF
FIESTA MART, LLC**

**VERIFIED APPLICATION OF THOMAS D. CUNNINGHAM
TO APPEAR *PRO HAC VICE* ON BEHALF OF PLAINTIFF**

I, Thomas D. Cunningham, declare and state:

1. I am an attorney at law and hereby request permission, pursuant to Rule XIX of the Rules Governing Admission to the Texas Bar, to appear as counsel for *pro hac vice* for Fiesta Mart, LLC in the above-titled action. I have personal knowledge of the matters stated herein and, if called upon, could and would testify competently thereto.

2. My office address is SIDLEY AUSTIN LLP, One South Dearborn Street, Chicago Illinois, 60603. My telephone number is 312-853-7594, my fax number is 312-853-7036; and my e-mail address is tcunningham@sidley.com.

3. I will be associated with licensed Texas attorney, Penny P. Reid, Bar No. 15402570. Ms. Reid's address is SIDLEY AUSTIN LLP, 2021 McKinney Avenue, Suite 2000, Dallas, Texas 75201. Her phone number is 214-981-3300; her fax number is 214-981-3400; and her e-mail address is preid@sidley.com.

4. In the preceding two years, I have not applied to appear *pro hac vice* in any matter before a Texas state court.

5. I have been admitted to practice and am a good standing of the Illinois State Bar since November 9, 1995. I have also been admitted to practice and I am in good standing with the U.S. District Court for the Northern District of Illinois since December 20, 1995, the Trial Bar of the U.S. District Court for the Northern District of Illinois since November 10, 2009, and the U. S. District Court for the Western District of Michigan since January 13, 2017.

6. In the preceding five years, I have not been the subject of disciplinary action by the Bar of courts of any jurisdiction in which I am licensed.

7. In the preceding five years, I have not been denied admission to the courts of any State or to any federal court.

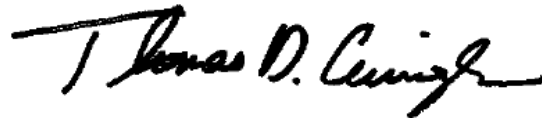
8. I am familiar with the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct governing the conduct of members of the State Bar of Texas and will at all times abide by and comply with the same so long as such Texas proceeding is pending and said Applicant has not withdrawn as counsel therein.

VERIFICATION

I am the applicant in this matter. I have read the foregoing application and the matters stated in it are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Dated: November 26, 2018



Thomas D. Cunningham